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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,260	05/29/2001	James G. Snyder	25049A	5901

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OWENS CORNING
2790 COLUMBUS ROAD
GRANVILLE, OH 43023

EXAMINER

PRATT, CHRISTOPHER C

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 12/19/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/867,260

Applicant(s)

SNYDER, JAMES G.

Examiner

Christopher C Pratt

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 6-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4-5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-5 and 9-11, drawn to a laminate, classified in class 442, subclass 394.
 - II. Claims 6-8, drawn to a process for preparing insulation, classified in class 427, subclass various.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by another method comprising dispersing the adhesive on to a fiberglass wool while the adhesive is tacky then adhering the remaining layers.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Stephen Barns on 12/3/02 a provisional election was made with traverse to prosecute the invention of group I, claims 1-5 and 9-11. Affirmation of this election must be made by applicant in replying to this Office

action. Claims 6-8 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-5 and 9-11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 and 13-17 of copending Application No. 09/894671. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications specifically claim the same subject matter.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 1771

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 is indefinite as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: Claim 9 does not clearly define the spatial relationship of the various layers.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-5 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over McBride et al (5318644) or Applicant's Admitted Prior Art (AAPA) in view of Briggs (4366203).

McBride is concerned with the creation of a fiberglass insulation product comprising fiber glass wool (col. 1, lines 6-15). Said product comprising external layers of kraft paper and HDPE (cols. 4-5, lines 50-5). McBride teaches the use of adhesive

Art Unit: 1771

layers, but is silent with respect to the specific composition of said adhesive (col. 4, lines 42-43 and col. 5, lines 6-7 and 19-21).

Applicant also discloses that insulation products comprising fiberglass wool, polyethylene film vapor barrier layers, and kraft paper are known in the art (p. 1-2 of applicant's specification).

Briggs is concerned with the creation of a multilayer insulation product comprising fiberglass (col. 1, lines 6-10 and col. 3, lines 21-33). Briggs teaches adhering various layers together with a LDPE (col. 5, lines 43-56). It would have been obvious to a person having ordinary skill in the art to utilize the LDPE adhesive of Briggs in the laminate of McBride or AAPA. Such a modification would have been motivated by the desire to utilize an adhesive, which is "commercially available and convenient to use."

With respect to claims 2-3 and 10-11, neither reference seems to specify the amounts of materials used. It would have been obvious to a person having ordinary skill in the art to modify the size of the vapor barrier layer and the amount of adhesive used. Such a modification would have been motivated by the desire to optimize the balance between the competing properties of insulation, flexibility, weight, and structural stability.

With respect to claims 4-5, the softening point of the two polyethylene layers is inherent based on the chemical make-up of the material.

With respect to claim 5, the examiner takes official notice that it is common and well known in the art to use polyethylene and polypropylene interchangeably in

Art Unit: 1771

insulation laminates. As such, it would have been obvious to a person having ordinary skill in the art to utilize polypropylene. Such a modification would have been motivated by the desire to utilize a common commercially available material. The examiner notes that the facts asserted to be common and well-known are capable of instant and unquestionable demonstration as being well-known. To adequately traverse such a finding, an applicant must specifically point the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.

11. Claims 1-5 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel et al (6191057B1) and Berdan, II et al (6128884). The examiner notes that these references qualify as prior art under 102(a), as well as 102(e).

Patel and Berdan are concerned with the creation of an insulation material comprising a vapor barrier layer of HDPE and an adhesive layer of LDPE (col. 3, lines 10-45). Patel and Berdan teach that kraft paper is commonly used in such insulation (col. 2, lines 35-37). It would have been obvious to a person having ordinary skill in the art to utilize a kraft layer in the insulation of Patel or Berdan. Such a modification would have been motivated by the desire to improve the product integrity and handleability of said insulation.

Patel teaches applicant's claimed temperatures (col. 6, lines 49-51). With respect to Berdan, the softening point of the two polyethylene layers is inherent based on the chemical make-up of the material.

Said insulation comprising fiber glass (col. 9, lines 1-10 and col. 6, lines 20-30).

With respect to claims 2-3 and 10-11, it would have been obvious to a person having ordinary skill in the art to modify the size of the vapor barrier layer and the amount of adhesive used. Such a modification would have been motivated by the desire to optimize the balance between the competing properties of insulation, flexibility, weight, and structural stability.

With respect to claim 5, the examiner takes official notice that it is common and well known in the art to use polyethylene and polypropylene interchangeably in insulation laminates. As such, it would have been obvious to a person having ordinary skill in the art to utilize polypropylene. Such a modification would have been motivated by the desire to utilize a common commercially available material. The examiner notes that the facts asserted to be common and well-known are capable of instant and unquestionable demonstration as being well-known. To adequately traverse such a finding, an applicant must specifically point the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.

12. Claims 1-5 and 9-11 are rejected under 35 U.S.C. 103(a) as being obvious over Patel et al (6357504B1).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome

by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(I)(1) and § 706.02(I)(2).

Patel is concerned with the creation of an insulation material comprising a vapor barrier layer of HDPE and an adhesive layer of LDPE (col. 3, lines 10-45). Patel teaches that kraft paper is commonly used in such insulation (col. 2, lines 35-37). It would have been obvious to a person having ordinary skill in the art to utilize a kraft layer in the insulation of Patel. Such a modification would have been motivated by the desire to improve the product integrity and handleability of said insulation.

Patel teaches applicant's claimed temperatures (col. 7, lines 60-63).

Said insulation comprising fiber glass (col. 6, lines 55-57).

With respect to claims 2-3 and 10-11, it would have been obvious to a person having ordinary skill in the art to modify the size of the vapor barrier layer and the amount of adhesive used. Such a modification would have been motivated by the desire to optimize the balance between the competing properties of insulation, flexibility, weight, and structural stability.

With respect to claim 5, the examiner takes official notice that it is common and well known in the art to use polyethylene and polypropylene interchangeably in insulation laminates. As such, it would have been obvious to a person having ordinary skill in the art to utilize polypropylene. Such a modification would have been motivated by the desire to utilize a common commercially available material. The examiner notes that the facts asserted to be common and well-known are capable of instant and unquestionable demonstration as being well-known. To adequately traverse such a finding, an applicant must specifically point the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Pratt whose telephone number is 703-305-6559. The examiner can normally be reached on Monday - Friday from 7 am to 4 pm.


If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the

Art Unit: 1771

organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Christopher C. Pratt
December 13, 2002



CHERYL A. USKA
PRIMARY EXAMINER